MEETING OF THE

DISTRICT OF COLUMBIA STATEHOOD
CONSTITUTIONAL CONVENTION

- - -

Monday, May 3, 1982

7:43 p.m.

Ninth Floor Auditorium
10th and E Streets, Northwest
Washington, D. C.

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P R O C E E D I N G S

(7:43 p.m.)

PRESIDENT CASSELL: I call the convention to order. We'll have our moment of meditation.

(A moment of meditation.)

PRESIDENT CASSELL: Mr. Secretary, would you call the roll, please?

MR. COOPER: Delegate Baldwin?

MR. BALDWIN: Here.

MR. COOPER: Delegate Barnes?

(No response.)

MR. COOPER: Delegate Blount?

MR. BLOUNT: Present.

MR. COOPER: Delegate Bruning?

MR. BRUNING: Here.

MR. COOPER: Delegate Cassell?

PRESIDENT CASSELL: Here.

MR. COOPER: Delegate Clark?

(No response.)

MR. COOPER: Delegate Coates?

MR. COATES: Present.

MR. COOPER: Delegate Cooper, present.

Delegate Corn?

MS. CORN: Here.

MR. COOPER: Delegate Croft?

(No response.)

MR. COOPER: Delegate Eichhorn?

MS. EICHHORN: Here.

MR. COOPER: Delegate Feeley?

MS. FEELEY: Present.

MR. COOPER: Delegate Freeman?

(No response.)

MR. COOPER: Delegate Garner?

(No response.)

MR. COOPER: Delegate Graham?

(No response.)

MR. COOPER: Delegate Harris?

MS. HARRIS: Here.

MR. COOPER: Delegate Holmes?

(No response.)

MR. COOPER: Delegate Jackson?

MR. JACKSON: Present.

MR. COOPER: Delegate Johnson?

MS. JOHNSON: Present.

MR. COOPER: Delegate Jones?

MS. JONES. Present.

MR. COOPER: Delegate Jordan?

MR. JORDAN: Here.

MR. COOPER: Delegate Kameny?

MR. KAMENY: Here.

MR. COOPER: Delegate Lockridge?

MS. LOCKRIDGE: Here.

MR. COOPER: Delegate Long?

MR. LONG: Here.

MR. COOPER: Delegate Love?

MR. LOVE: Here.

MR. COOPER: Delegate Maguire?

MS. MAGUIRE: Here.

MR. COOPER: Delegate Marcus?

MR. MARCUS: Good evening.

MR. COOPER: Delegate Charles Mason?

MR. MASON: Here.

MR. COOPER: Delegate Hilda Mason?

MS. MASON: Here.

MR. COOPER: Delegate Brian Moore?

MR. B. MOORE: Present.

MR. COOPER: Delegate Jerry Moore?

(No response.)

MR. COOPER: Delegate Talmadge Moore?

MR. T. MOORE: Here.

MR. COOPER: Delegate Nahikian?

MS. NAHIKIAN: Here.

MR. COOPER: Delegate Nixon?

(No response.)

MR. COOPER: Delegate Oulahan?

MR. OULAHAN: Here.

MR. COOPER: Delegate Paramore?

(No response.)

MR. COOPER: Delegate Robinson?

(No response.)

MR. COOPER: Delegate Rothschild?

MR. ROTHSCHILD: Here.

MR. COOPER: Delegate Schrag?

MR. SCHRAG: Here.

MR. COOPER: Delegate Shelton?

(No response.)

MR. COOPER: Delegate Simmons?

MS. SIMMONS: Present.

MR. COOPER: Delegate Street?

MS. STREET: Here.

MR. COOPER: Delegate Terrell?

(No response.)

MR. COOPER: Delegate Thomas?

MR. THOMAS: Here.

MR. COOPER: Delegate Warren?

MS. WARREN: Present.

MR. COOPER: Delegate Barnes?

(No response.)

MR. COOPER: Delegate Croft?

(No response.)

MR. COOPER: Delegate Freeman?

(No response.)

MR. COOPER: Delegate Garner?

(No response.)

MR. COOPER: Delegate Graham?

(No response.)

MR. COOPER: Delegate Holmes?

(No response.)

MR. COOPER: Delegate Jerry Moore?

(No response.)

MR. COOPER: Delegate Nixon?

(No response.)

MR. COOPER: Delegate Paramore?

(No response.)

MR. COOPER: Delegate Robinson?

(No response.)

MR. COOPER: Delegate Shelton?

(No response.)

MR. COOPER: Delegate Terrell?

(No response.)

MR. COOPER: Mr. President, 33 delegates present.

PRESIDENT CASSELL: There being 33 delegates present, the convention is now in order.

Delegate Kameny?

MR. KAMENY: Thank you, Mr. President. I rise to a point of personal privilege. This afternoon, in the middle or the latter part of the afternoon, I placed my briefcase on the table here. When I returned after several committee meetings, in preparation for this session, I found that my briefcase was gone. I hope it was not stolen, but if anybody knows of its whereabouts, whether you are staff or a delegate, I'd be most appreciative of letting me know. It is brown; it has a somewhat unusual style with two handles. Thank you very much. My entire future life and its orderly conduct depends upon finding the things in it. Thank you.

PRESIDENT CASSELL: All right. Let us hope that it was inadvertently misplaced and that it will turn up before the night is over.

MR. KAMENY: Thank you very much.

PRESIDENT CASSELL: Okay. I have an announcement to make. At Saturday's meeting, we indicated that the Executive Committee and the chairpersons of the various committees had met and considered recommending to you, and did recommend to you, that in light of the progress we were making, the time of the convention be extended, through grant of the City Council with the concurrence of the Mayor, for a period of 30 days.

We are meeting at this hour because the Executive Committee and the committee chairpersons have again met over the past two hours to decide on the best way to address the issue. There was some concern that the longer the time we extended, the more that void could be filled.

There was some concern that we needed to be more specific about what happens in any extension of time. The Executive Committee will now recommend for your vote on Saturday a change, and that change is that the time be extended for only two weeks and, during that period, there be a redefinition of the time for the reading of articles, responding to questions, amendments, and incidental amendments -- a redefining of the time, which means a change of the rules; and then that that extended two-week period be addressed

in this manner.

We start with the last week and decide on the time for the last readings, and from that point back, the time for the second readings. That would then define the first reading, which would be from that point back until today. And then the redefined rules which would allow for the orderly consideration of the articles as well as the amendments and incidental amendments would be defined in that way. This becomes the first order of business on Saturday.

We are now back to the continuation of the reading of the articles of the Executive Branch Committee. Delegate Simmons?

I might say also that we now have a parliamentarian, who is simply not with us. The gentleman is Mr. Cal Lindo, who had agreed to be with us tonight, and with us three days per week, with an individual from the National Parliamentarians' Association who would, working with him, serve those other two days. He is simply not here yet. Thank you.

MS. SIMMONS: Thank you, Mr. President. Mr. President, I wonder if I might have some clarity as to what will be the modus operandi for the handling of this report, all, of course, within the confines of our rules.

I did share on Saturday -- and this is to refresh the

memory of those of you who were present and also to bring up to date anyone who may have been absent on Saturday -- the Executive Branch Committee did read all of the sections of this article to the body.

I also shared with the body, and I have for distribution at this time, those style and drafting comments which I made on Saturday. What we wish to share with you is the set of changes that may appear as inconsistences, and on the sheet presently being distributed, two pages, you will have seven items.

There are, on number 7, line 2, two words to be stricken if they haven't been stricken from yours already. I hope that each of you did have an opportunity to read the section, along with the chronology, as well as the analysis.

(Pause.)

MS. SIMMONS: I was trying to give you a minute or two to glance at the sheet that was just distributed. Is the house ready to consider this?

This technically is the period which is the question and answer period; section-by-section, we will be going. We have one minority report that we know of in advance. If we have other minority reports, we would appreciate those being shared.

I would like to speak to the fact that I received this evening -- Mr. Moore, was that an amendment or was that a minority report? That was an amendment, right?

MR. B. MOORE: Yes.

MS. SIMMONS: What Mr. Moore was sharing -- and let me just share that with you -- he was sharing the specified duties for the secretary of state and the attorney general. I might make it very clear that this document represents this committee's consensus. However, there were instances where individual members felt exceedingly strong on a particular item that did not carry a majority position.

We felt that the ideological base from which the committee operated -- we would rather put everything that everyone wanted in and have it, as a body, deleted, if that should be the case, or supported, if that should be the case, rather than to deny those elements that any committee member had who had given faithful and long service in the discussion and research in terms of these items.

So, you will find that the duties of other elected officers -- secretary of state and attorney general -- received one line and shortshrift. And I would like to share with you that it was not the majority position that those two officers be included as elected officers in the executive branch. It

was very late in our readings when a member was very strong in expression of having those out of our procedure. We included them.

Now, what we also have, as you well know, is the set of duties, and we've got those duties if, indeed, the secretary of state and the attorney general are, by this body, voted up to exist. And I would like to share with you that the duties of the secretary of state shall be, but not limited, custodial, legislative and administrative with regard to elections and publications. And then each of those are specifically enumerated, which we will share at that appropriate time.

With regard to the attorney general, the attorney general's duties would be prosecutorial and advisory. We have that also specified, if indeed those two positions are elected. But I'm sharing with you that that was not the majority position, and based on the aforementioned policy, they were included.

You will find also in this document the provision of the appointment by the governor of vacancies with regard to the United States Senate or Senate-elect. We did check; we did not find this provision in any of the constitutions. We do not find this proviso even in the United States Constitution.

It was included because of the uniqueness of the District of Columbia's 180 years of not having those kinds of federal positions and to highlight and emphasize in our document in 1982 that those senatorial positions would be filled if a vacancy occurred.

Now, it is a practice that is accepted and is engaged in by every state in the Union, but it simply is not written into their constitutions; vacancies are provided by law. This, too, was respectfully submitted in deference to that same policy that I indicated to you earlier. It did have more support, however, than the election of the secretary of state and the attorney general.

Mr. President, may I ask for the reading for acceptance only of the minority report, after which, section-by-section, the majority report will be read? Whereupon, the minority report which is at variance with any one of the majority reports -- it is at that time that it becomes incumbent upon the author of the minority report to so state them prior to the enactment of that majority position in the majority report.

Is that appropriate, and may we proceed in that fashion, Mr. President?

PRESIDENT CASSELL: The Chair has no problem with

that procedure.

MS. SIMMONS: Very good. We'll have the minority report. Are there any other ones?

(No response.)

MS. CORN: Mr. President, in the interests of time, since the vast majority of my minority report is specific amendments and there is only one section where it's a complete substitution, rather than standing here and reading this at this point, I would prefer that the Chair will see that as soon as we get to the sections where I have any disagreement with the majority report, I be the first one recognized to present my amendment.

PRESIDENT CASSELL: You shall.

MS. CORN: Thank you, sir.

PRESIDENT CASSELL: Delegate Simmons?

MS. SIMMONS: Very well. Section I, "Executive Power Vested in the Governor" -- I move the adoption of Section I.

PRESIDENT CASSELL: Is there a second?

(The motion was duly seconded.)

PRESIDENT CASSELL: Who moved?

MS. SIMMONS: I moved it. It was seconded by several people.

PRESIDENT CASSELL: Yes. Delegate Simmons, there is the question and answer period, after which there is to be a motion to adopt.

MS. SIMMONS: Let's have the question and answer period first, okay?

PRESIDENT CASSELL: Yes. Please proceed.

MS. SIMMONS: Bobby Maguire, would you come over? We're going to divide this and we're going to have questions and answers in defense of our sections by various members of the committee.

PRESIDENT CASSELL: Delegate Corn?

MS. CORN: I have one question in Section IV(b).

MS. MAGUIRE: We're on Section I, Gloria.

MS. LOCKRIDGE: We're on Section I.

MS. CORN: I thought that the questions and answers were for the whole document.

MR. KAMENY: Are we in question and answer now or section-by-section adoption?

PRESIDENT CASSELL: We are on now Section I.

MS. SIMMONS: We're in questions and answers on that section.

MS. CORN: On Section I, and then you're going to do questions and answers on the next section?

PRESIDENT CASSELL: That is correct. Are there any questions on Section I? Delegate Mason, delegate Love.

MR. MASON: I would ask the committee if there were many other constitutions that used the word "supreme." I don't like it; it looks too much like a dictatorship. I would simply say, "The executive power of the state shall ..."

MS. MAGUIRE: I was originally against the word "supreme" also, and the reason I was sold on it was because it appears in, like, 22 state constitutions; they use the words "supreme executive." It was to emphasize the committee's position on a strong executive.

MS. MASON: What?

MS. MAGUIRE: It was to emphasize the committee's position on a strong executive.

PRESIDENT CASSELL: Delegate Love?

MR. LOVE: My question was already asked. Thank you.

PRESIDENT CASSELL: Delegate Kameny?

MR. KAMENY: Yes. I notice that having indicated that the supreme executive power of the state is vested in the governor, you then say, "The Governor shall be responsible for the faithful execution of the laws," implying that the governor shall not be responsible for all the other duties and responsibilities which are listed elsewhere in this

article because you leave them out.

I would therefore move that we add to the --

PRESIDENT CASSELL: This is the question and answer period.

MR. KAMENY: I'm sorry. There seemed to be a melding of the two functions. If I'm out of order, may I be recognized in due course?

PRESIDENT CASSELL: Surely.

MR. KAMENY: In omitting that, we are in a sense exempting the governor from faithfully carrying out all the duties given to him by the constitution.

MS. MAGUIRE: It says, "The supreme executive power of the state shall be" --

MR. KAMENY: That's not quite the same.

PRESIDENT CASSELL: Let me remind you it is 8:06 now. We began the question and answer period at 8:02. At 8:32, that period will end.

Other questions on Section I?

MS. MAGUIRE: If I could go on to say a little bit more about Section I, these two sentences are the most commonly used in the other 50 state constitutions that we looked at. More importantly, our legal counsel found these most efficient from our original draft, which did include much

more lengthy language. If you look at our rationale, it explains that.

PRESIDENT CASSELL: All right. Having no further questions, delegate Simmons?

MS. SIMMONS: Section II, "Office of Lieutenant Governor."

MR. KAMENY: Point of order.

MS. SIMMONS: Yes?

MR. KAMENY: Are we not going to pursue the motion and adopt Section I?

MS. SIMMONS: No. This is question and answer, 30 minutes only.

PRESIDENT CASSELL: On the entire article.

Section II, delegates Long, Kameny, Bruning.

MR. LONG: Was there any consideration of the alternative of not having a lieutenant governor at all?

MS. MAGUIRE: The committee's rationale for that was based on looking at other constitutions again. If you look at our rationale, we based a lot on other constitutions, and specifically on the Sidley and Austin report, which unfortunately was not attached to the committee report. But that was the suggestion of our legal counsel, along with the committee, about this.

PRESIDENT CASSELL: Delegate Kameny?

MR. KAMENY: No. I'm sorry; I didn't have a question. Thank you very much.

PRESIDENT CASSELL: Delegate Bruning?

MR. BRUNING: Was there any consideration given to putting a time frame on the length of either absence or disability?

MS. MAGUIRE: That is why we inserted the words "by the Supreme Court" in that section.

MR. BRUNING: Thank you.

PRESIDENT CASSELL: Delegate Love?

MR. LOVE: Did you debate the possibility that happens in other states that, as the governor leaves, the lieutenant governor stays home and plays, and that therefore what you find is what you found out in California? The governor would leave and the lieutenant governor would suddenly be making appointments right and left, and everything like this. Then, when the governor came back, they would have a big fight about what the lieutenant governor was doing.

MS. MAGUIRE: That was one of the reasons for advice and consent of the legislature, if you read through the entire article, on many of the powers of the governor.

MR. LOVE: Well, why not cross out the word

"absence" so that the lieutenant governor only takes over when there's disability, and just let the governor run the state even if he has to go somewhere else?

MS. MAGUIRE: I think I answered that before. That's why we put in "determined by the Supreme Court."

PRESIDENT CASSELL: Delegate Mason?

MR. LOVE: No, no. What this says is that if the governor leaves, in the absence of the governor the lieutenant governor will take over. Our governor may go up to Baltimore. During that time, the lieutenant governor could sit here and do all sorts of things in the governor's place.

MS. MAGUIRE: Our interpretation of that -- and maybe this needs to go to Style and Drafting -- is that absence or disability is determined by the Supreme Court. We weren't referring to a trip to Baltimore. What we were referring to is if the governor disappeared and was absent from the state for no stated reason and he wasn't fulfilling the functions of governor, that absence would be determined by the supreme court, and therefore the lieutenant governor would serve in his absence.

MR. LOVE: Oh, I see.

MS. SIMMONS: Let's also refer, delegate Love, to our rationale in Section II, where we were persuaded through

the development of this section from the model state constitution to not overburden this constitution with specificity, but, in fact, leaving the draft of these duties to be a part of the law.

The question you're getting at, I know, is, whenever the governor is absent, can the lieutenant governor begin to veto bills and appoint people and engage in that kind of --

MR. LOVE: This is brought up by our legal counsel in his review also that he has just handed out -- the same problem.

MS. SIMMONS: What we were suggesting is that the major sources for the development of this section came from the model state constitution and from the Sidley-Austin report on the executive, and the first draft did specify extensive duties for the lieutenant governor. But the committee was persuaded, as I said, not to overburden the constitution with it.

PRESIDENT CASSELL: Delegate Mason?

MR. MASON: Did the committee consider dropping absolutely the idea of absence? As far as I'm concerned, the President of the United States, even if he's in Afghanistan, signs the bills and makes the appointments, or the appointments

wait until he comes back. In other words, nobody else can do that for him.

I see no more reason why a governor should lose that power when he leaves the state than when the President leaves the country. If there is to be a lieutenant governor -- I haven't made up my mind one way or the other on whether I would want one or not -- it seems to me that his sole function or her sole function would be to replace the governor when the governor dies or is somehow declared totally incapable of functioning by the Supreme Court or in some specialized manner.

But in view of the things that have happened in other states where this similar language is used and governors just go across the state line -- people who live in our area go to the Giant in Maryland, and the lieutenant governor could make appointments while the governor is doing his shopping.

MS. SIMMONS: Your point is well taken.

MS. MAGUIRE: I think in light of this discussion and the general counsel's opinion, the committee would be very open to deleting the word "absence."

If I could just speak again to the lieutenant governor, in addition to the reasons that we've stated in our rationale and in the draft concerning the disability or death

of the governor, one of the things that was discussed in our committee was that presently our single-member executive -- people get really tired of looking at the same person cutting ribbons at parks. But we will have Senators and Congressmen.

We thought that for protocol reasons, it is very wise to have two elected representatives to serve the functions of the people. When this draft was originally written, the attorney general and secretary of state were not elected officials; they were going to be appointed, such as our corporate counsel now is. So, that was an additional reason for wanting to include a lieutenant governor.

PRESIDENT CASSELL: Let me remind you it is now 8:14; we have 18 more minutes for this 30-minute questioning period. Let me ask everybody if they would make their responses as brief as possible. Once the question has been answered satisfactorily, we can just cut it and move on to the next one.

Delegate Simmons?

MS. SIMMONS: Section III, "Other Elected Officers."

(No response.)

MS. SIMMONS: No questions; very good. Section IV, "Election and Term of Office of Governor and Lieutenant Governor." I hope that you made the correction as it was

read in line 4, "regular election in the same year of the Presidential election," and in line 8, "in the same office" following the word "again."

MS. CORN: Following the word what?

MS. SIMMONS: "Again" -- "to succeed again."

MS. MASON: What are you saying?

MS. SIMMONS: I'm saying on Saturday, the original document was read with line 4 saying, "regular election," striking "every other even-numbered." "In the same" was inserted, "year of the Presidential election."

Questions? Kameny and Corn.

MR. KAMENY: Why was a decision made to make the gubernatorial election in the same year as the Presidential election instead of in other years -- any of the other three years in the cycle?

It would seem to me that you'd want the governor to participate in the national politics of the party and the like, and not to be distracted just at that time, nor the people of the city who will be busy with a Presidential election, by a gubernatorial election, but give it its proper due when it comes around and have the governor be able to give it its proper due when his time comes around.

PRESIDENT CASSELL: Let me ask you, whenever a

question has been addressed in your report, would you point to that and ask if they would accept that? Delegate Kameny did that very well himself during his report.

MS. LOCKRIDGE: Delegate Kameny, Section IV -- that is, page 2 of our rationale -- if you will look at that, you will see why --

MS. SIMMONS: Page 2, Section IV.

MS. LOCKRIDGE: Of our rationale.

MS. SIMMONS: I submit that for your perusal.

PRESIDENT CASSELL: Delegate Corn?

MS. CORN: Yes. In subsection (b) of Section IV, why did you decide only that the governor and lieutenant governor cannot succeed themselves in the same office, but you did not say that the secretary of state or the attorney general could not succeed themselves in their offices?

PRESIDENT CASSELL: Delegate Simmons, let me interrupt. Delegate Corn, this is an issue that you will be reading in your minority report. You are on the committee. Obviously, you're not going to be persuaded by anything that is said.

Why don't you save us some time and address that at the time you make your minority report?

Delegate Simmons, would you move on?

MS. SIMMONS: Yes. We do have the rationale, delegate Corn, in two documents; one in the back in the analysis and rationale of the sections, and then again in a section on style and drafting changes.

But let me answer the question very simply by saying I don't think you read it accurately. The lieutenant governor can only serve two times, but he can then become governor and serve two terms.

PRESIDENT CASSELL: Can we move on since the explanation is quite clear in the report?

MS. SIMMONS: Section V, "Qualifications."

(No response.)

MS. SIMMONS: Section VI, "Powers of the Governor." I would like to address a point with regard to the uniqueness of the District of Columbia. We said that the governor shall be commander-in-chief of the armed forces of the state and may call out such forces to execute the law.

I know there are those who talk about the cooperation of the Army commandant because we happen to be in Washington, D. C. I believe that what we state here does not obviate that cooperation, but we did not feel it necessary to specify it in our constitution. I think that good, professional protection of the people would dictate that.

Yes?

MR. MASON: I think our national guard is an entirely different thing than the national guard in any state. The governor does have the definite power to call in the national guard in any place except the District of Columbia. So, when we become a state, this is just routine for any state.

MS. SIMMONS: Thank you.

MR. ROTHSCHILD: "The Governor may remove any official appointed by the Executive." That's irregardless of whether or not there was an approval by the legislature?

MS. SIMMONS: Where are you reading?

MR. ROTHSCHILD: Aren't we are on VI.

MS. LOCKRIDGE: Page 3.

MS. SIMMONS: Let him tell me the page and the line.

MR. ROTHSCHILD: I'm sorry. Page 3, line 6, "The Governor may remove any official" --

MS. SIMMONS: "May remove any official appointed by the Executive"; that's correct.

MR. ROTHSCHILD: In other words, they don't have to go to the legislature to get approval?

MS. SIMMONS: That is correct. The legislature is at the front end of the process. It's with the advice and

consent of the legislature that people are appointed.

MR. ROTHSCHILD: When the legislature convened on lines 14 through 17, what was the thinking behind limiting the power that the legislature will have at that point? If something comes up that they didn't calculate for that they have to deal with, what is the purpose of limiting it?

MS. LOCKRIDGE: I'd just like to make a statement here.

MS. SIMMONS: All right.

MS. LOCKRIDGE: A lot of these questions that are being asked are in the rationale. I think if you would take time before you ask the questions to look at the rationale, then we won't have to waste time being redundant. What you're asking is in the rationale and explained explicitly.

MS. SIMMONS: It was this entreaty that I made on Saturday, hoping that maybe your bedside reading might be these two documents on Sunday and this morning.

PRESIDENT CASSELL: Delegate Kameny, one moment, please. One of the requirements of the committee chairs was that they not only provide the articles, but they provide a clear and concise analysis and report. I would like very much to have everybody examine that report and not consume our time by asking questions that are clearly answered.

Delegate Simmons, let me ask you if you would simply refer -- unless you yourself feel it needs some explanation, refer to that point in the explanation in the report where the answer exists, and then we'll move on. Thank you.

MS. SIMMONS: Yes?

MR. KAMENY: I stand to be corrected if I'm wrong, but since it's my impression that treason is a federal offense -- I've never heard of a traitor to a state; I've heard of a traitor to the national government -- why was treason included in section (c) under executive clemency?

MS. SIMMONS: Good question. I'm sure that it was not thought of in anything other than federal terms.

MR. KAMENY: In that case, the state governor would have no power over it even if he were authorized to grant clemency.

MS. SIMMONS: That stands as a potential deletion. Thank you.

MR. KAMENY: Do you want an amendment at the right time?

MS. SIMMONS: Yes.

MR. KAMENY: Thank you.

PRESIDENT CASSELL: Why don't you call on them, Barbara?

MS. SIMMONS: All right. In this order: Mr. Rothschild, Mr. Jackson, Mr. Bruning.

MR. ROTHSCHILD: The question that I was asking was not actually answered in the report. What I'm asking is what is the purpose in limiting that ability, not the purpose of having it available? What was the thinking there?

MS. SIMMONS: The purpose of limiting it is because when the governor called a special meeting -- it's just like if this body would have a special meeting, you have to designate what the subject is in advance because people many times decide, based on the subject area, whether or not they will or will not make themselves available.

We're thinking in terms of people as a state legislature, which doesn't convene every day of the week, all year long. Most legislatures don't do that. So, we're thinking that when the governor calls, it's for a special session; it's for a special purpose with a special agenda. Otherwise, it's a very sneaky way to call people together and get a partisan group present to do all kinds of business, and undo some business, if you please.

MR. ROTHSCHILD: What happens if the legislature is of the will, though, that there's something that they were not called to do that has to be done?

MS. SIMMONS: The legislature then can make laws that can deal with that. But the constitution should not permit other than a specified call with a proclamation for that in terms of the safety of the prerogatives of the legislature and the people who have elected the legislature and the governor.

MR. ROTHSCHILD: But this prohibits the legislature from doing that.

PRESIDENT CASSELL: This is not debate. This is only to get an explanation, and I think the reasons for it have been explained.

Any further questions on this section?

MS. SIMMONS: Yes. Mr. Jackson, and then Mr. Bruning, and then Mr. Long.

MR. JACKSON: Under section (b), it has been a long time since a state was invaded either in the Indian wars or the Civil War. But what is meant there? Does that mean that if 5,000 youths came here demanding jobs, the governor could throw them out?

MS. SIMMONS: I wouldn't interpret 5,000 youths coming to the city as an invasion. So, I certainly did not have that in mind when we wrote this. I really was talking about, you know, what the British did when they made it

necessary for the President to vacate the White House; that was the kind of invasion.

MR. JACKSON: I'd just amend it because I think what you've said there could be quite dangerous.

MS. SIMMONS: I hear you.

MR. JACKSON: Thank you.

PRESIDENT CASSELL: Further questions?

MS. SIMMONS: Mr. Bruning was next, and then Mr. Moore and Mr. Schrag.

MR. BRUNING: Point of information. I think John Brown was probably hung for insurrection for treason against the state of Virginia. So, I think there can be treason against a state.

MS. SIMMONS: Delegate Brian Moore?

MR. B. MOORE: Yes. I have a question on page 3, line 7. Was any consideration given to the idea of utilizing the federal armies because of our proximity to the federal government and because of the value of the federal monuments and Congress, and so forth?

MS. SIMMONS: Mr. Moore, I even mentioned that that kind of cooperation between the army commandant and the governor is to be understood and does not need to be written into the constitution. But it does not obviate that

cooperation from existing or being utilized.

Delegate Schrag?

MR. SCHRAG: I wonder if you see any inconsistency between section (d) on the legislature's power to deal with other subjects in a special session and Section X of the draft of the Legislature Committee which has been circulated to the delegates, which provides that the legislature may be convened at other times other than its regular session by the governor or, at the written request of a majority of the members, by the presiding officer of the senate.

The Legislature Committee intended to enable the legislature to call itself into a special session through this majority procedure. If the legislature were called, under your provisions, by the governor and while the members were there, they wanted to sign a petition to have their own special session immediately after the governor's session and both of these articles have been passed, could they do so? Are these consistent?

MS. SIMMONS: Yes, they are consistent.

MR. SCHRAG: Thank you.

MS. SIMMONS: They are consistent; they are not inconsistent.

MR. SCHRAG: Thank you.

MS. SIMMONS: All right; very good. Section VII, "Budget: General and Deficiency Appropriation Bills."

MR. COATES: Question.

MS. SIMMONS: Yes, delegate Chair of Taxation and Finance?

PRESIDENT CASSELL: Let me remind us we have three more minutes before the 30-minute period is up.

MR. COATES: Thank you, Madam Chairperson.

First, I notice that in the rationale there is no detailed rationale with respect to Section VII, and so this is to emphasize how utterly dependent we are upon the considered information that the committee chair has given us.

Firstly, in respect to line 6, the sentence, "Proposed expenditures from any fund shall not exceed the estimated appropriation thereto" -- would this prevent, for example, in the case of a dedicated revenue source -- case in point, driver's education -- the state could not appropriate beyond what those dedicated revenues are to provide for driver's education?

In that same manner, would any other service delivery be limited with respect thereto?

MS. SIMMONS. Delegate Coates, I believe in the instances that you've indicated what becomes clear in our line

6 is that the proposed expenditures must be what is reasonable to be raised. Now, we know clear and well that they are estimates; they have to be. A budget is an estimate; it's not a precise document.

I believe that that is handled by, after the fact, the need many times to have an across-the-board two percent or five percent deduction. But the governor's powers would only be that of letting each of those agencies determine what the specificity would be, but not the percentage. I think he is responsible for seeing that the --

MR. COATES: My question then regards the phrase, "any fund," which in my estimation is more restrictive, and it is to inquire if "any fund" is understood in the manner that I implied.

MS. SIMMONS: I hear you.

MR. COATES: A second question begins with respect to line 12. "The Governor may submit amendments to appropriation bill(s) to be offered during legislative consideration of the budget to meet deficiencies in current appropriations."

Does this limit any other response the governor might make to deficiency spending requirements? If there would be an imbalance within a fiscal period, let us say,

between revenues and expenditures, would he be, under this provision, also able to finance such expenditures by short-term borrowing?

MS. SIMMONS: There is nothing here which would prohibit that.

MR. COATES: Okay.

MS. SIMMONS: There is no language which prohibits him.

MR. COATES: Another question is in line 18. "Reductions in Expenditures: No appropriation shall be a mandate to spend." Now, I'm concerned about the governor's ability to impound appropriations made by the legislature, either based on his initial budget request or on amendments thereto by the legislature.

Now, I read the following sentences beginning on line 19 and ending on about line 23. Do those lines constitute the only conditions under which the governor is not mandated to spend?

MS. SIMMONS: These are the only conditions except as could be prescribed by law. Lines 22 and 23: "Reductions in expenditures shall be made in accordance with procedures prescribed by law," which would be what exists in the constitution under taxation and finance or prescribed by the

legislative branch.

MR. COATES: Okay, I understand the meaning of the committee.

Then, finally, with respect to line 23 and ending in line 25, "The Governor may reduce expenditures of the Legislative and Judicial branches for funds constitutionally dedicated for specific purposes."

Now, I'm wondering what funds are constitutionally dedicated in the view of the committee, and then secondly the rationale for this provision. Thirdly, does not that same rationale obtain with respect to public education?

MS. SIMMONS: First, what has been made very clear is that the governor -- and this was the intent of the committee -- would not reduce; as you read that, you left out the negative. You said the governor may reduce.

MR. COATES: I'm sorry; "may not." Your point is well taken.

MS. SIMMONS: Yes. What we were attempting to do is to preserve to the legislative and the judicial branches those expenditures which they have, by tradition and history, validated the need for and developed. I'm not sure how ours will be, but there are constitutional funds in some states.

For example, the gasoline tax can be used only for

highway repair, maintenance and upkeep. I believe what we were doing was anticipating what will be a prerogative of the legislature. We did not design this to be restrictive, but suggestive.

MR. COATES: Is it based on the --

PRESIDENT CASSELL: Delegate, I am sorry, but the time is up. Delegate Simmons, do you wish to make a motion to adopt?

MS. SIMMONS: I do. Ladies and gentlemen of the delegate assembly for the District of Columbia Statehood Constitutional Convention, I move that the article for the executive branch of the constitution for this body, Sections I through XV, be adopted, as amended.

MS. CORN: Ad sereatim.

MS. SIMMONS: Ad sereatim, as amended.

PRESIDENT CASSELL: Second?

(The motion was duly seconded.)

PRESIDENT CASSELL: It has been moved and seconded that the sections of this article be adopted, as amended, ad sereatim. Is there any discussion on that?

MR. ROTHSCHILD: We really didn't cover all the points, sir. There are many questions still to be raised at different points in this.

PRESIDENT CASSELL: I think I made it clear that the rules allow 30 minutes; that time is up.

MR. ROTHSCHILD: We should extend it because we haven't covered all the points. There are many things that really should be spoken to in this report.

PRESIDENT CASSELL: Well, you know, if we respect the time and try to restrict our questions and our answers, we'll be able to function within that time.

MR. ROTHSCHILD: Yes, but in restricting our questions, we're really overlooking stuff.

MR. BALDWIN: He's not speaking to the motion.

PRESIDENT CASSELL: There's a motion on the floor, and it has been moved and seconded that this article be adopted ad sereatim. Those in favor of that motion, signify by saying aye.

(A chorus of "ayes.")

PRESIDENT CASSELL: Opposed?

(No response.)

PRESIDENT CASSELL: Abstain?

(One hand was raised.)

PRESIDENT CASSELL: Delegate Simmons?

MS. SIMMONS: Section I, "Executive Power Vested in the Governor"; I so move.

(The motion was duly seconded.)

PRESIDENT CASSELL: It has been moved and seconded for the adoption of Section I. Those in favor, signify by saying aye.

(A chorus of "ayes.")

PRESIDENT CASSELL: Discussion? Delegate Love?

MR. LOVE: I think delegate Mason had his hand up first.

PRESIDENT CASSELL: Delegate Mason?

MR. MASON: I move to strike the word "supreme."

PRESIDENT CASSELL: Is there a second?

(The motion was duly seconded.)

PRESIDENT CASSELL: It has been moved and seconded that the word "supreme" be struck in Section I of the executive branch article. Discussion?

(No response.)

PRESIDENT CASSELL: Those in favor, signify by saying aye.

(A chorus of "ayes.")

PRESIDENT CASSELL: Those opposed?

(There was one "nay.")

PRESIDENT CASSELL: Those abstaining?

(No response.)

PRESIDENT CASSELL: The motion carries.

MR. JORDAN: Mr. Chair?

PRESIDENT CASSELL: Point of order, point of inquiry, point of information?

MR. JORDAN: No. I didn't hear you call for the vote; I just heard people responding.

PRESIDENT CASSELL: I said, "Those in favor, signify by saying aye."

MR. JORDAN: Somehow, it didn't come across on the mic.

MS. HARRIS: You'd better talk louder.

PRESIDENT CASSELL: We'll make it louder. I can speak a little louder. Delegate Simmons?

MS. SIMMONS: On Section I, did you call for the action?

PRESIDENT CASSELL: Yes. The amendment passed. Those in favor of adopting Section I, as amended, signify by saying aye.

(A chorus of "ayes.")

PRESIDENT CASSELL: Those opposed?

(No response.)

PRESIDENT CASSELL: Abstain?

(No response.)

PRESIDENT CASSELL: Delegate Simmons?

MS. SIMMONS: Section II, "Office of Lieutenant Governor," whose duties shall include lines 7 through 11; I so move.

(The motion was duly seconded.)

PRESIDENT CASSELL: It has been moved that Section II, lines 7 through 11, be adopted. Discussion? Kameny, Love, Moore.

MR. KAMENY: Mr. President, I move the deletion of the word "absence" after "gubernatorial" on line 8.

MR. LOVE: "Absence or."

MR. KAMENY. "Absence or."

(The motion was duly seconded.)

PRESIDENT CASSELL: It has been moved and seconded that the words "absence or" after "gubernatorial" on line 8 be struck. Discussion? Delegate Schrag?

MR. SCHRAG: I'm in favor of this amendment. Without it, literally every time the governor went across the street to the supermarket in Maryland, we would have a constitutional crisis, and I think this clarifies this section.

PRESIDENT CASSELL: Is anybody against the motion?

MS. CORN: I have one reservation.

PRESIDENT CASSELL: Is this "for?"

MS. CORN: Against.

PRESIDENT CASSELL: Well, we've had one against.

MS. CORN: For keeping it in.

PRESIDENT CASSELL: Very good; I see. Go ahead.

MS. CORN: I can understand if you don't want to have it where everytime the governor crosses the state line to Virginia or Maryland, you have a constitutional crisis. On the other hand, if the governor went to Europe on vacation for a month or three weeks, you want to have some provision to cover that time period.

So, maybe what we need here is, instead of omitting the word "absence," say "absence as determined by legislation" -- something to clarify that there has to be a real absence for two weeks or whatever.

PRESIDENT CASSELL: Delegate Mason?

MR. MASON: When the President goes to Afghanistan or anywhere in the world, he continues to sign bills and he continues to make appointments. There's no reason why a governor should stop doing these things in Europe.

MS. SIMMONS: Your point is well taken.

MS. CORN: I withdraw my comments.

PRESIDENT CASSELL: Further discussion?

MR. ROTHSCHILD: One problem I have with it is how

about if the governor is unavailable? In other words, he's absent and he can't be reached for an emergency. In other words, he's not disabled.

MS. SIMMONS: That's why they have those machines that sign his name.

MR. ROTHSCHILD: But I mean say he can't be reached and there's an emergency situation. What provides for that?

MS. SIMMONS: Then the lieutenant governor makes the decision.

MR. BALDWIN: Previous question.

PRESIDENT CASSELL: The previous question has been called. Those in favor of cutting off debate, signify by saying aye.

(A chorus of "ayes.")

PRESIDENT CASSELL: Those opposed?

(No response.)

PRESIDENT CASSELL: Abstain?

(No response.)

PRESIDENT CASSELL: Okay. Those in favor of the amended motion for the office of lieutenant governor, signify by saying aye.

(A chorus of "ayes.")

PRESIDENT CASSELL: Those opposed?

(No response.)

PRESIDENT CASSELL: Abstain?

(One hand was raised.)

PRESIDENT CASSELL: Delegate Simmons?

MS. SIMMONS: Section III, "Other Elected Officers."

MR. B. MOORE: Point of order.

PRESIDENT CASSELL: Delegate Jordan?

MR. JORDAN: Mr. Chair, I move to strike --

MR. B. MOORE: Point of order.

PRESIDENT CASSELL: State your point of order.

MR. B. MOORE: There was only one amendment to Section II. Two other delegates were recognized for other amended, and you proceeded on to Section III.

PRESIDENT CASSELL: What other delegates were recognized?

MR. B. MOORE: Myself and there was one other, Love.

MR. LOVE: No; I'm sorry. Mine was the same as Mr. Kameny's.

PRESIDENT CASSELL: You weren't recognized, were you?

MR. B. MOORE: Yes, I was.

PRESIDENT CASSELL: I didn't call your name; I really didn't.

MR. B. MOORE: You said Kameny, Moore and Love.

MS. LOCKRIDGE: Mr. President, you called his name.

PRESIDENT CASSELL: Okay, very good.

MR. B. MOORE: Am I in order to make a --

PRESIDENT CASSELL: Kameny?

MR. COOPER: We just voted on that.

MR. KAMENY: I made my point on this. I thought I was being recognized for the next one.

PRESIDENT CASSELL: Very good. The Chair apologizes. Delegate Moore?

MR. B. MOORE: I'd like to make a substitute motion to eliminate Section II and Section III, and in their place put the following. "There shall be an elected" --

PRESIDENT CASSELL: Delegate Moore, that's out of order. Section II is not on the floor.

MR. COOPER: Section III is not on the floor.

PRESIDENT CASSELL: I beg your pardon. Section III is not yet on the floor, "Other Elected Officers."

MR. B. MOORE: A substitute for Section II, then. I move the following: "There shall be an elected secretary of state whose duties will include the combined functions normally carried out by a lieutenant governor found in larger states."

What I'm going to read now included something that was just amended, but if you'll bear with me, I can amend it, but I'd like --

PRESIDENT CASSELL: Proceed.

MR. B. MOORE: "The secretary of state shall serve as governor in the event of gubernatorial absence for over one day or 300 miles or disability, as determined by the Supreme Court. The secretary of state shall exercise only the administrative duties" --

MR. BALDWIN: We're dealing strictly with the office of the lieutenant governor, and his remarks should be such. His substitute motion should deal strictly with the office of the lieutenant governor.

PRESIDENT CASSELL: This motion states that the lieutenant governor, which section we're dealing with now, should be replaced by a secretary of state.

MR. BALDWIN: Okay.

PRESIDENT CASSELL: So, it's in order. Please proceed as quickly as possible.

MR. B. MOORE: Okay. "The secretary of state shall exercise only the administrative duties necessary to assure the state's continued and efficient functioning until the governor returns to the state, returns from disability, or is

replaced in a special election. The secretary of state's primary duties shall be prescribed by law."

PRESIDENT CASSELL: Is that the end?

MR. B. MOORE: That's the end of my motion.

PRESIDENT CASSELL: Okay. Is there a second to that substitute motion?

(The motion was duly seconded.)

PRESIDENT CASSELL: It has been moved and seconded that the description of the secretary of state and duties replacing those as indicated in the article for the lieutenant governor be in force. Is there a discussion?

MR. B. MOORE: Yes. Upon reading the proposed article, I thought it would be a better idea to combine the lieutenant governor's functions with the secretary of state's functions. The idea behind that is it's a savings of money, and it's also a more proper way to perform the function when the governor is either out of state a significant time or a significant distance; number two, when he's disabled; and, number three, if he has been impeached or, for some reason, the governor will no longer function as governor.

It's just a very practical consideration. The District of Columbia now is a very small area geographically. It's a very small area population-wise, and I just think it

would be a waste of money to include a lieutenant governor with minimal functions. And if we limit the functions of the secretary of state in administering the state in place of the governor so that he can't appoint other commissions, and so forth, such as is happening in California, then I think we could allow the state to continue to function quite well in the governor's absence.

So, I ask your consideration of this motion. It would, I think, strike the Congress well because of the cost savings factor here. It's a theme that I promoted in my earlier ideas. Once again, with the size geographically and population-wise, it seems to me very practical.

PRESIDENT CASSELL: Delegate Maguire?

MS. MAGUIRE: I think that you'll be very interested to know, delegate Moore, that when the original duties of lieutenant governor were drafted, they included the duties of secretary of state. When they were deleted, it was because other committee members decided that they wanted to include an elected secretary of state and attorney general, and that was a debate in the committee.

We agree that we'd like to have an efficient government, but we don't agree that just striking the lieutenant governor and putting in a secretary of state would

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serve that function.

It is very, very common in other states, and if you were on our committee you would know that the functions of the secretary of state are often held by the lieutenant governor. So, I speak against your motion and would hope that we'd be able to deal with this when we get to the next section. Maybe we'll have a secretary of state, but those duties would be included in the functions of lieutenant governor.

PRESIDENT CASSELL: Delegate Jackson?

MR. JACKSON: Yes, sir. I would like to speak in favor of the motion. History has not shown us where any lieutenant governor has served any specific purpose. The example now of California with the big scandals and problems there -- the most recent example is in Maryland where the lieutenant governor even said himself that he was just a waste of money.

It seems to me that in Washington, as has been the case with the Mayor here, he has appointed an executive secretary and the business went on. If it is true that when the executive officer is out of the state or out of the city the work goes on, I see no purpose at all for a lieutenant governor, outside of wasting upwards of a half a million

dollars, roughly, for ceremonial functions -- big salary and staff and everything else -- of the taxpayers' money.

So, I would speak against it, unless someone can show me where any lieutenant governor in modern history has served any purpose.

MS. MAGUIRE: Are you speaking against Brian Moore's motion?

MR. JACKSON: I'm speaking in favor of Brian Moore's motion.

MS. MAGUIRE: Delegate Jackson --

PRESIDENT CASSELL: No, no; you don't have to respond to each one of these now. Delegate Corn?

MS. CORN: I would also speak in favor of delegate Moore's motion, and I'll tell you why. In the Washington Post about four weeks ago, they were thinking of amending the Maryland state constitution to delete the lieutenant governor and give those functions to somebody else. A salary of 50,000 or better a year, and staff to go with it and office space, is just a waste.

PRESIDENT CASSELL: Delegate Mason?

MR. MASON: I would move to amend the Moore amendment by striking the words "absent for" -- whatever his language was that relates to that.

(The motion was duly seconded.)

PRESIDENT CASSELL: Tell us where that is now, what line of the Moore amendment.

MR. B. MOORE: I accept it as a friendly amendment, Mr. President.

PRESIDENT CASSELL: I don't know where the amendment is, delegate Mason.

MR. COOPER: Point of clarification, Mr. President, please.

MS. HARRIS: He has a point of clarification.

PRESIDENT CASSELL: Point of clarification?

MR. COOPER: Yes. As Mr. Moore stated the amendment, it was "absent over one day or 300 miles." So, maybe you might want to strike all of that.

MS. SIMMONS: Mr. President, I wonder if I might call to the attention of the speaker on this amendment an oversight they may have made. Line 11 in Section II of the lieutenant governor says, "including the duty of serving in an appointed executive position." That is so the lieutenant governor can, in fact, have some very real responsibilities, not ceremonial only.

As a matter of fact, we had that language before we bowed to the desire of having two other elected officials,

because we think it's terribly important, since they are elected as a set, governor and lieutenant governor, that the people then will clearly have serving as governor the person whose ideology they support, because they voted for the governor and the lieutenant governor as a set of candidates, not singularly.

I think, therefore, that for whatever reason the lieutenant should be functioning, he has the approval of the electorate and their wishes will not be violated. If you elect someone for secretary of state or attorney general, you are electing them for precise and specific skills and abilities which may not indeed include where one's ideological head is as the chief executive of the state.

We think that that is important, and that that there is a very real and discrete distinction that needs to be understood.

PRESIDENT CASSELL: Delegate Jordan?

MR. JORDAN: Mr. Chairman, I'd like to move the previous question.

(The motion was duly seconded.)

PRESIDENT CASSELL: It has been moved and seconded that the debate be cut off. Those in favor, signify by saying aye.

(A chorus of "ayes.")

PRESIDENT CASSELL: Those opposed?

(No response.)

PRESIDENT CASSELL: Abstain?

(No response.)

PRESIDENT CASSELL: The question on the floor is the amendment of delegate Moore, and let me make sure everybody understands that amendment. "There shall be an elected secretary of state whose duties will include the combined functions normally carried out by a lieutenant governor found in larger states. The secretary of state shall serve as governor in the event of gubernatorial absence or disability, as determined by the Supreme Court. The secretary of state shall exercise only" --

MS. CORN: Point of order. Mr. Mason had a motion that was seconded to delete the words "or absence."

PRESIDENT CASSELL: Let me read this again now. "The secretary of state shall serve as governor in the event of gubernatorial disability, as determined by the Supreme Court." Is that correct?

MR. B. MOORE: Yes.

PRESIDENT CASSELL: Okay. "The secretary of state shall exercise only those administrative duties necessary to

assure the state's continued and efficient functioning until the governor returns to the state, returns from disability, or is replaced in a special election."

MR. B. MOORE: Remove "returns to the state."

MR. MASON: We have to remove that so that that follows.

PRESIDENT CASSELL: Yes, okay. Is that your motion correctly stated now?

MR. B. MOORE: That's correct, Mr. President.

PRESIDENT CASSELL: Those in favor?

MS. LOCKRIDGE: May I ask a question, please, as a point of information?

PRESIDENT CASSELL: Yes.

MS. LOCKRIDGE: Delegate Moore, so I can determine how I'm going to vote here, am I to understand that what you are suggesting, then, will replace the lieutenant governor altogether? That would be eliminated?

MR. B. MOORE: That is correct.

MS. LOCKRIDGE: All right, thank you.

PRESIDENT CASSELL: Those in favor of the motion, signify by raising your hands, please. Those in favor of delegate Moore's substitute motion as just read -- those raising your hands are in favor of the motion just read.

MR. COOPER: Fourteen.

PRESIDENT CASSELL: Those opposed?

MR. COOPER: Twelve.

MR. BALDWIN: Division of the house, please.

PRESIDENT CASSELL: There has been a question as to the accuracy of that vote; there were hands going up and down.

MR. BALDWIN: Let it go; I withdraw the question.

PRESIDENT CASSELL: All right, that has been withdrawn.

Delegate Simmons?

MR. B. MOORE: What was the result, Mr. President?

PRESIDENT CASSELL: The motion carried.

MR. COOPER: Fourteen in favor, twelve against.

MS. SIMMONS: Section II is now, "Office of Secretary of State."

PRESIDENT CASSELL: What is the point?

MS. SIMMONS: The point is very simply that that does mean that we need to engage in a number of consistencies in later sections because, as I indicated earlier, the governor and the lieutenant governor were elected as a set, not as individuals. So, there would always be a chief executive who was representing the ideology of the people who elected him.

The secretary of state is elected in a very separate

kind of election for precise skills. I am suggesting, then, that the accompanying, necessary consistencies be engaged in, and I would submit that delegate Moore should be about the rewriting of those sections as we move along.

MS. CORN: Point of order, Mr. President.

PRESIDENT CASSELL: The substitute motion has just passed eliminating the office of the lieutenant governor.

MS. SIMMONS: That's correct.

PRESIDENT CASSELL: What's the point of order?

MS. CORN: These inconsistencies can easily be taken care of in the Committee on Style and Drafting.

MS. SIMMONS: That's not a point of order.

PRESIDENT CASSELL: Delegate Kameny?

MR. KAMENY: Yes. There is another more fundamental problem that needs to be addressed at some point somewhere. According to delegate Moore's motion which we just passed, the remainder of the duties of the secretary of state are to be prescribed by law.

The secretary of state is now, as was before, a constitutional office. You set the duties of constitutional offices in the constitution; you do not set the duties of constitutional offices by law. This is a fundamental defect both of this and of the old Section III, which I was going to

raise at that time.

MS. SIMMONS: We hoped to eliminate old Section III.

MR. KAMENY: This needs to be corrected in some orderly manner of procedure, whether by the committee or by this body, but it needs to be corrected. You don't write a constitution that way.

MS. SIMMONS: That's correct, and you don't write constitutions --

MR. KAMENY: All we have done is to change name tags. We now have a lieutenant governor who is now called a secretary of state; that's all that was done. That was going to be deleted in the next motion anyhow.

MS. SIMMONS: Yes.

MR. KAMENY: He has no duties in the constitution; the constitution gives him nothing to do. All we have done is change the name tags; we have done nothing else.

MS. SIMMONS: That's exactly right.

PRESIDENT CASSELL: Delegate Jordan, do you wish to be recognized?

MR. JORDAN: Yes, sir. I had initially asked to be recognized before Brian Moore had risen to amend Section III by abolishing it at this point.

MS. SIMMONS: Yes.

MR. JORDAN: So, if it's in order, Mr. Chairman, I'd like to do that. I would like to state, though, that there's no place else in this committee's report where the duties of the secretary of state are defined. Those who have argued that it's going to save money now find themselves in the position where the secretary of state is in the same posture that the lieutenant governor was in, and that is he has no duties.

But, Mr. Chairman, if it's appropriate at this point, I would rise to move to strike Section III.

(The motion was duly seconded.)

PRESIDENT CASSELL: It has been moved and seconded that Section III, which provides for a secretary of state and an attorney general, whose qualifications and duties shall be prescribed by law, be struck. Discussion? Harris?

MS. HARRIS: Yes. A question to the maker of that motion: what then happens to the attorney general?

MR. JORDAN: I'm asking that the attorney general be abolished.

MS. HARRIS: Why?

MS. SIMMONS: He doesn't have to be elected. He can be selected by the legislature or appointed by the governor.

MR. JORDAN: I'm suggesting that the same thing that's going to happen to the secretary of state will happen to the attorney general, as provided in Section III.

MR. KAMENY: He has no constitutional duties. Why have him?

MS. SIMMONS: That's right.

PRESIDENT CASSELL: All right. Further discussion on the motion? Bruning, Corn.

MR. BRUNING: The effect would be that you're satisfied with the fact that the officers don't have specified duties. I think we should write in specified duties rather than eliminate the office. I think there is good and sufficient reason to have an attorney general. There is a good and sufficient reason to have an attorney general with something to do; that is, give legal opinions to the governor, for example, and handle things like referendums. I think we're shooting the horse and everybody else in the name of expediency. I say don't throw the whole thing out.

PRESIDENT CASSELL: Delegate Maguire?

MS. CORN: Mr. President?

PRESIDENT CASSELL: I did call on you first, yes. Delegate Maguire, you're next.

MS. CORN: I would make a substitute motion. Is it

in order to do so?

PRESIDENT CASSELL: Yes, it is.

MS. CORN: I would make a substitute motion to delete the words "Secretary of State," and put in place thereof "Comptroller," so that Section III will now read, "There shall be an elected Comptroller and Attorney General, whose qualifications and duties shall be prescribed by law."

MR. KAMENY: It's the same thing.

MS. SIMMONS: Same thing.

MS. CORN: Let me just start with one part then; let me give a division. "There shall be an elected Comptroller and Attorney General." Then, after that, I would move that it go back to the committee for them to give them the duties, or I could say right now, "The Comptroller shall be in charge of all of the state's finances."

PRESIDENT CASSELL: Delegate Corn, I'll let you make a specific motion; it can't be either/or.

Delegate Rothschild?

MR. ROTHSCHILD: Mr. President, I think delegate Maguire was next.

PRESIDENT CASSELL: I'm sorry; I didn't see you.

MS. MAGUIRE: If I could just speak to the rationale of why we were going to move to delete the attorney general

and the secretary of state, the thinking behind that was research that we received on -- I would appreciate it if people would listen to me, and if they'd like to speak, they can go outside and speak. I've worked too hard on this to have people speaking while I am. Delegate Marcus, I gave your committee quite a bit of respect.

MR. MARCUS: I'm sorry. I was explaining what was on the floor to another delegate who was unable to hear.

PRESIDENT CASSELL: Please, sir; that is out of order and disrespectful to the first speaker asking for respect.

MS. MAGUIRE: One of our lines of thinking behind not wanting an elected secretary of state and attorney general is because we don't want to tire out the voters. We feel that the more politicians and the more elected officials we create, the more this constitution might not be looked favorably upon by the voters and by the people on the Hill. That was part of our thinking, and you might want to keep that in mind when creating all these politicians.

We have an attorney general now, the corporate counsel, but he is not elected. Our whole thinking behind a strong executive was to have people working in the executive that would be accountable to the governor, and whom he would

appoint with advice and consent.

We didn't write in every position; that doesn't have to be written into the constitution. The corporate counsel does not have to be specified in our constitution. So, the committee's position originally was to only mention two offices, lieutenant governor and governor. The lieutenant governor would serve as secretary of state and have other executive positions written in there for cost efficiency.

People did not want to listen to our rationale. They thought that their wording for secretary of state was wiser than ours.

PRESIDENT CASSELL: I think your point has been made now; you're repeating yourself.

The motion on the floor is to replace "Secretary of State" with "Comptroller." Further discussion? Rothschild, Barnes, Marcus.

MR. ROTHSCHILD: Mr. President, I was trying to amend a section that we passed where you didn't call for more amendments, because I felt the lieutenant governor, or now the secretary of state, should also be able to act in emergencies when the governor is unreachable. You went so quickly that you sort of passed by that and didn't call for the other amendments.

MR. BALDWIN: Can we speak to the question that's pending, Mr. Chairman?

PRESIDENT CASSELL: Delegate Barnes?

MR. BARNES: I'm having trouble hearing and I wanted to know if I could turn up the amplifier.

PRESIDENT CASSELL: Can you hear the chairperson?

MR. BARNES: I'm having trouble hearing.

PRESIDENT CASSELL: Me?

MR. BARNES: Yes.

MS. SHELTON: Point of information.

PRESIDENT CASSELL: Point of information?

MS. SHELTON: I need instructions.

PRESIDENT CASSELL: There's a motion on the floor by delegate Corn to replace, on line 14, "Secretary of State" with "Comptroller."

MR. MARCUS: Point of information.

PRESIDENT CASSELL: Point of information?

MR. MARCUS: Who seconded delegate Corn's motion?

MS. LOCKRIDGE: No one.

PRESIDENT CASSELL: I don't remember.

MR. MARCUS: I don't believe there was a second.

PRESIDENT CASSELL: Mr. Secretary, did that receive a second?

MR. COOPER: No.

MS. CORN: Point of order, Mr. President.

PRESIDENT CASSELL: Yes?

MS. CORN: You did not call for the second.

PRESIDENT CASSELL: The Chair was negligent, but it still didn't get a second. A motion cannot be on the floor without a second.

MS. CORN: May I request that you call for a second now?

MS. LOCKRIDGE: No; it has been ten minutes.

PRESIDENT CASSELL: The next person, please. Marcus?

MR. MARCUS: Mr. President, first I'd like to apologize to delegate Maguire. I didn't mean to cause you any offense. One of the other delegates here couldn't hear.

I would make a substitute motion to Section III to strike the words "Secretary of State and."

(The motion was duly seconded.)

PRESIDENT CASSELL: All right. It has been moved and seconded that, on line 14, Section III, the words "Secretary of State and" be struck.

MS. SIMMONS: Is that an amendment to the amendment?

PRESIDENT CASSELL: He's making a substitute for the amendment, which is in order.

MR. MARCUS: All I'm doing, Mr. President -- we've already voted to have an elected secretary of state in Section II. I'm simply deleting the words "Secretary of State and" so that it's consistent with the language. It would read, "There shall be an elected Attorney General, whose qualifications and duties shall be prescribed by law."

PRESIDENT CASSELL: Very good. Now, is that clear? We're striking "Secretary of State and." It has been moved and seconded. Discussion? Love?

MR. LOVE: I'd like to speak against this motion. If we get back to the original motion, it takes care of all of Section III. It gets us back to where we want to be, which is with a governor and a secretary of state, and no attorney general and nobody else. So, I'd like to urge defeat of this.

PRESIDENT CASSELL: Is there a response to that, Marcus?

MR. MARCUS: It's not where I want to be. I would like to have an elected attorney general. I think that the behavior of the corporate counsel with regard to the citizens of the city is a perfect example of why there should be elected accountability in regard to that particular position.

I have no desire to see an attorney general who acts

solely at the whim of the governor and is an arm of the governor without any accountability to the people. I appreciate the argument that, in fact, we create too many elected executive officers. But, in fact, an elected attorney general is a well-respected position in many states and it has worked principally very well in most northeastern states in which the attorney general has been elected. Thank you.

PRESIDENT CASSELL: Delegate Kameny, delegate Jackson, and then I'd like to vote.

MR. KAMENY: I have problems once again with the question of an election of an officer whose duties are not prescribed in the constitution. Suppose the legislature, which creates the laws, does not like the person elected and decrees that his duties shall consist of collecting the trash in Ward 8 or Ward 6?

If you're going to set up an office in the constitution, you have to set up the duties in the constitution that go in separately, or else you are electing an officer who has nothing to do or may be given any kind of idiosyncratic duties dictated by the politics of the moment.

This is an untenable mode of doing things, and I suggest that either this section be amended to provide duties for the officers retained, whoever we may choose to retain, or

that those who do not have duties prescribed in the constitution be deleted from the constitution.

PRESIDENT CASSELL: Delegate Jackson?

MR. JACKSON: Yes, sir. I speak in favor of the election of the attorney general. I might add that none of the duties are spelled out, except that the governor shall execute the laws. That point, I think, is something we will come to later.

I think, though, that where there have been elected people who were responsible for executing the laws, as is the case in New York, and especially New York City where I think Mrs. Holzman has proven to be a very good law enforcement official, this is something that's very important.

I think that those responsible for executing the laws of the city and of the state should be directly responsible to the people. By electing those persons instead of appointing them, that keeps the hierarchy from moving up, so that you would never have an attorney general who, in fact, can become governor and who was not elected, but appointed by the governor. So, anyone who could become governor should be elected.

PRESIDENT CASSELL: Delegate Simmons?

MS. SIMMONS: Mr. President, I did -- and I hope you

have not forgotten -- I did make it very clear in my preparatory remarks that while the committee was not happy and anxious to have these two elected positions, we did have duties. I pointed out that the duties of the secretary of state -- and we have a set to be added since that has been the evidenced desire of the body -- they would be legislative, custodial and administrative with regard to elections and publications.

Likewise, we pointed out that the duties of the attorney general would be prosecutorial and advisory. We have those specific duties here and I would be perfectly happy to see that these are made available. I could read them, and I certainly agree with delegate Kameny that you cannot constitutionally create positions without duties unless, in fact, you're going to pay someone to do nothing.

Shall I read them?

PRESIDENT CASSELL: Yes.

MS. SIMMONS: The duties of the attorney general would be: in his prosecutorial duties, the attorney general can have the authority to initiate local prosecutions, intervene in local prosecutions, assist the local prosecutor, or even supersede the local prosecutor.

In his advisory duties, he may issue advisory

opinions to state executive officials, legislators and local prosecutors on interpretations of statutes, or the constitutionality of bills or ordinances. He may review legislation either prior to passage or before signing.

His duties also include commencing civil proceedings and criminal proceedings, representing the state before regulatory agencies, administering consumer protection programs, and handling consumer complaints. The attorney general can also have subpoena power and antitrust duties as well as serving as counsel for the state and appearing for the state --

PRESIDENT CASSELL: Excuse me, delegate Simmons. Where are you reading from?

MS. SIMMONS: I'm reading from the duties that our committee considered if these offices should be included. Obviously, we thought that these duties would exist just the same as appointed persons rather than elected persons, and so we did not put them in the constitution. We think this is a lot of garbage to put in a constitution, frankly.

PRESIDENT CASSELL: Where would they be defined? You've listed them, but where would they be defined if not in the constitution?

MS. SIMMONS: If we elect them, they have to be

defined in the constitution. If a person is appointed, they are defined legislatively and by the executive.

PRESIDENT CASSELL: Well, I'm confused now, because they are shown here as elected officials.

MS. SIMMONS: That's what it is now, yes.

PRESIDENT CASSELL: So, why are their duties not reflected in the constitution?

MS. SIMMONS: Because we had hoped for these people not to be elected.

PRESIDENT CASSELL: All right.

MS. SIMMONS: It's just that simple. It was a position we opposed.

PRESIDENT CASSELL: Have you taken a position on the motion, delegate Simmons?

MS. SIMMONS: Yes. We are opposed to the motion. We want them to be appointed.

PRESIDENT CASSELL: Mr. Jordan, we have not had two for and two against; we've had three against and one for. Delegate Clark?

MR. CLARK: Mr. Chair, is the proposal an amendment or a substitute?

PRESIDENT CASSELL: This is a substitute.

MR. CLARK: All right, then, I believe I will not be

in order for another substitute, so I will speak against the amendment and say that, in time, I'm prepared to offer a substitute.

PRESIDENT CASSELL: You're speaking against the substitute?

MR. CLARK: Yes, sir. What I would rather have and what causes me to be against this substitute is a provision that would require that the attorney general be appointed by the governor and serve for a period of six years, which would be longer than the term of the governor.

PRESIDENT CASSELL: Delegate Clark, I understand your desire, but you're not speaking to the substitute motion.

MR. CLARK: Yes, sir, I am, but I think there's a better proposal. I'm not presenting the better proposal, but it is germane to speak against something because you think something else is better. Therefore, I would believe myself to be in order.

The proposal that I would offer if I were able would allow for an appointed attorney general to serve for a period of six years, removable only upon good cause. I do not believe that we ought to have an elected attorney general; I do not believe it for a number of the reasons that I stated when I was in opposition to an elected judiciary.

If you have an elected attorney general in this city during times of extremely emotional situations, he would not bring to that office the balance that I think is necessary for even administration of justice. I believe also that the attorney general ought to represent the executive branch's feelings on a given measure.

When you have a situation wherein the electorate has chosen a person of one view for the executive position and a person of another view for the attorney general's position, which is possible, then you have a situation where the attorney general may not adequately represent the executive branch. There is some chance of that in the proposal I would offer, but not as much.

The proposal I would offer, by virtue of having a six-year term and by virtue of having removal only for good cause, would allow an adequate independence in the attorney general so that if there were wrongdoing within the executive branch, the attorney general could address it.

PRESIDENT CASSELL: Ms. Harris?

MS. HARRIS: A question for delegate Clark. You indicated that you would not be for an elected attorney general in case of emotional situations. Could you clarify that for me?

MR. CLARK: If an elected attorney general were standing for election and he was having to undertake the presentation of particular causes of action -- I think particularly in the area of criminal prosecution -- and there was at the time --

PRESIDENT CASSELL: Delegates, there is still too much buzzing; it's very difficult to hear.

MR. CLARK: For instance, you would probably find the application of prosecutorial discretion that would probably flow with the rise and fall of crime rates. When the crime rate went up, policies would become more stringent. When the crime rate went down, crime would probably not be a continuing concern of the attorney general to the degree that it might have been during the time of the rise in crime rates.

I personally think that a better way to deal with crime is to have a very steady and even and, I happen to believe, strong application of prosecutorial authority. If you have it fluctuating, you create an uneven application of the law as well as an atmosphere in which crime, in this particular case, can grow.

I believe that if we have the attorney general responsible to the electorate rather than to the executive, his choices and his policies are going to be more fluctuating

in character and that his connection with the people would best be effective by an appointment by the executive branch.

MR. BARNES: Point of procedure.

PRESIDENT CASSELL: Point of procedure?

MR. BARNES: I was just going to say that I thought the time had --

PRESIDENT CASSELL: Time has expired, yes.

The motion on the floor is to eliminate the secretary of state. Whose motion was that?

MR. MARCUS: Mine.

PRESIDENT CASSELL: Marcus, that was yours.

MR. MARCUS: I would like to say something before the vote, Mr. President.

PRESIDENT CASSELL: Delegate Marcus --

MR. MARCUS: I just want to --

PRESIDENT CASSELL: Delegate Marcus?

MR. MARCUS: Yes?

PRESIDENT CASSELL: You don't have a right to say something before the vote. You have spoken for your motion. I am allowing you to, but you don't have a right to speak forever, nor do you have a right to, according to our rules, speak last.

MR. MARCUS: Mr. President, I resent the implication

of your statement that I --

PRESIDENT CASSELL: You are out of order, sir.

MR. MARCUS: Mr. President, you continue to call me out of order when I am not out of order.

PRESIDENT CASSELL: Having had two for and two against, we're now calling for the motion.

MR. MARCUS: I resent this treatment, Mr. President.

PRESIDENT CASSELL: Those in favor of the amended motion --

MS. CORN: Point of order, Mr. President.

PRESIDENT CASSELL: Delegate Corn?

MS. CORN: Point of order, Mr. President.

PRESIDENT CASSELL: The President called on you, if you would listen.

MS. CORN: I can't hear with all of this. Mr. President, under the rules it specifically says that the maker of the motion may speak last. The implication of that is that if the maker of the motion wishes to, he or she may speak last. They do not have to, but they may if they wish to.

PRESIDENT CASSELL: I think you're quite right. He or she may speak last.

MS. CORN: If he or she --

PRESIDENT CASSELL: Now, would you please be quiet?

The President has determined that there have been three for and three against. It is now time to vote. So, even though he may, he may not; that's the ruling of the Chair.

MS. CORN: I challenge the ruling of the Chair.

PRESIDENT CASSELL: The motion is to eliminate the words "Secretary of State" on line 14, so that it should read, "There shall be an elected Attorney General, whose qualifications and duties shall be prescribed by law."

Yes, delegate Bruning?

MR. BRUNING: I think that it's an important point. I do not want to belabor the situation, but I would respectfully ask Style and Drafting or whoever wrote that particular section to give us the nuance behind the word "may." My understanding was that indeed "may" was the choice of the speaker as opposed to the choice of the Chair. If I am incorrect, I will accept the ruling, but I would like to know what the understanding of Style and Drafting or whoever wrote that section was.

PRESIDENT CASSELL: Delegate Bruning, if you understand the responsibility of Style and Drafting, they are deal exactly with that -- style and drafting. They are not to deal with the essence or the substance. The dictionary indicates what the meaning is of "may."